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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,279	04/21/2005	Dieter Hermeling	29827/41149	8528

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EXAMINER	
STEELE, JENNIFER A	

ART UNIT	PAPER NUMBER
1771	

MAIL DATE	DELIVERY MODE
05/17/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/532,279	HERMELING ET AL.	
	Examiner	Art Unit	
	Jennifer Steele	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 April 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18 and 21-24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-18 and 21-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's arguments with respect to the restriction requirement are persuasive and the election restriction has been withdrawn. Examiner agrees that the special technical feature is the pressing at not less than 60°C and not less than 3 bar and the cited reference does not teach this feature. The cited reference WO 01/56625, reference compressing the fabrics in a Carver Laboratory Press Model #2697 at a top platen heated to 50°C and 7000 psi (483 bar) in order to prepare the fabric for measuring the FSEV (pg. 31, lines 33-39).

2. Claims 1-18, 21-24 submitted will be examined.

Claim Rejections - 35 USC § 102/103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claim 1-5, 9-18, and 21-24 rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Whitmore (WO 01/56625). Whitmore teaches absorbent articles and processes for making absorbent articles (ABST). Whitmore teaches a process wherein a superabsorbent monomer, superabsorbent polymer particles, water and initiator are a sprayed onto a fibrous web to form an absorbent article (pg. 3, lines 17-30). This process is considered by Examiner to be in-situ polymerization. Whitmore teaches methods of bonding fibrous webs are known to those skilled in the art and include thermal bonding, point bonding, powder bonding, ultrasonic bonding, chemical bonding, mechanical entanglement and the like (pg 17, lines 25-35). Whitmore teaches pressing the web or compression of the web one or more times during the construction or a disposable article such as a diaper (pg. 26, lines 31-36). Whitmore teaches a web density of 0.005 to about 0.12 gm/cm. Whitmore teaches preparing the web sample by compressing the fabrics in a Carver Laboratory Press Model #2697 at a top platen heated to 50°C and 7000 psi (483 bar) in order to prepare the fabric for measuring the FSEV (pg. 31, lines 33-39). As to claims 10 and 11, Whitmore teaches a Free Swell Capacity (FSC) that is measure of the ratio

of teabag to retention in 0.9% NaCl (pg. 31, lines 1-31). Whitmore presents results of FCS in Table 2, page 21 wherein the same FSC is 5101 and 5669 compared to 605 of the untreated fabric. Whitmore teaches the performance properties of FSEV and EVUL and teaches the methods or measuring these properties (pg 26, lines 15-20). Whitmore teaches the untreated and treated (pressed and heated fabric) and the effect on FSEV and EVUL in tables 3 and 4. As to claims 13 -16, Whitmore teaches that the change in FSEV and EVUL after 60 secs and 2 minutes is at least double and 60% higher than that of an uncompressed material (pg. 33 and pg 34). As to claim 17, Whitmore teaches an AAP at 0.7 psi in 0.9% NaCl solution is greater than 5 g/g. As to claims 23 and 24, Whitmore teaches methods for absorbing fluids, on page 30 and 31. Whitmore describes methods for measuring absorption of fluids under load (AUL) and free swell capacity absorption. Whitmore differs from the current application and does not teach compression or pressing temperature of not less than 60°C, 70°C, and 80°C.

It should also be noted that even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same or an obvious variant from a product of the prior art, the claim is unpatentable even though a different process made the prior product. In re Thorpe, 227 USPQ 964,966 (Fed. Cir. 1985). The burden has been shifted to the Applicant to show unobvious differences between the claimed product and the prior art product. In re 10/967635 Marosi, 218 USPQ 289,292 (Fed. Cir. 1983).

4. Claim 6-8 rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Whitmore (WO 01/56625). As to claims 6-8, Whitmore differs from the current application and does not teach a material that expands not less than 5-fold and not less than 10 fold in one dimension and by less than 20% in the other two dimensions on the addition of water. When the reference discloses all the limitations of a claim except a property or function, and the examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention the examiner has basis for shifting the burden of proof to applicant as in In re Fitzgerald, 619 F.2d 67, 205 USPQ 594 (CCPA 1980). See MPEP § § 2112- 2112.02

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claim 22-24 rejected under 35 U.S.C. 103(a) as being unpatentable over Whitmore (WO 01/56625) in view of Soerens (US 7115321). Whitmore does not teach a method of absorbing water vapor into the absorbent material of claim 1. Soerens teaches an absorbent binder coating system that can be applied to various substrates including absorbent garments, laminates, medical devices and packaging materials (ABST). Soerens teaches an absorbent material that absorbs water vapor, water and bodily fluids (col. 7, lines 27-32, 48-55). Soerens teaches that the water vapor is absorbed at 22°C and 50% relative humidity at a rate of at least 4 weight % per hour (col. 16, lines 55-64).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to determine a method of absorbing water vapor as taught by Soerens in the invention of Whitmore motivated to absorb water vapor and the advantages of absorbing water vapor.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer Steele whose telephone number is (571) 272-7115. The examiner can normally be reached on Office Hours Mon-Fri 8AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ELIZABETH M. COLE
PRIMARY EXAMINER

4/28/2007